INDEX

Page

SUBJECT INDEX

Petition for Writ of Certiorari 1

Opinions of the Courts Below 2

Jurisdictional Statement 2

Questions Presented 3

Constitutional Provisions and Statutes Involved 4

Statement of the Case 8

Argument 14

APPENDICES

A Opinion of the United States Court of Appeals for the Ninth Circuit 21

B Opinion of the United States Court of Appeals for the Ninth Circuit (On Rehearing) 33

C Opinion of the District Court on Consolidated Cases for Damages 35

D District Court Judgment (Benz, et al, Petitioners) 43

E District Court Judgment (McRae, et al, Petitioners) 44

F District Court Judgment (Morrison, et al, Petitioners) 46

TABLE OF CASES CITED

Page

Auto Workers v. Wisconsin Employment Relations Board (U. S. Supreme Court, Case No. 530, June 4, 1956) 17, 18

Benz, et al v. Compania Naviera Hidalgo, 205 F2d 944 10

Born v. Laube, 213 Fed. 2d 407 17

Garner v. Teamsters Union, 346 U.S. 485 13

International Union v. O'Brien, 339 U.S. 454 13

International Union v. Wisconsin Employment Relations Board, 336 U.S. 245 13

United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 12, 13, 14, 16, 17

Weber v. Anheuser-Busch, Inc., 348 U.S. 468 13, 16, 17, 18

CONSTITUTION, STATUTES AND OTHER AUTHORITIES CITED

United States Constitution:

Article I, Section 8, Clause 3 4

Article VI, Clause 2 4

United States Code Annotated:

Title 28:

Section 1254 (1), 62 Stat. 928 2

Section 1332 (a) (2), 62 Stat. 869 9

Title 29:

Section 141 et seq., 61 Stat. 136 et seq. 3

Section 157, 61 Stat. 140 4, 5

Section 158, 65 Stat. 601 3, 5

Section 185 (b), 61 Stat. 156 6

Section 187, 61 Stat. 158 6

Isaacson, Federal Versus State Jurisdiction, 42 A.B.A.J. 415 18

In the Supreme Court
of the United States

OCTOBER TERM, 1956

No. .....

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

William Benz, and others, the petitioners above named, respectfully petition for a Writ of Certiorari in

order that this court might review judgments of the United States Court of Appeals for the Ninth Circuit entered on April 6, 1956, affirming in part judgments of the District Court of the United States for the District of Oregon.

OPINIONS OF THE COURTS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is set forth herein as Appendix A, and is not yet reported in Federal (2d) Reporter. The Court's opinion on rehearing is set forth herein as Appendix B, and is not yet reported in Federal (2d) Reporter.

The opinion of the United States District Court for the District of Oregon in the consolidated cases is set forth as Appendix C.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Ninth Circuit which is sought to be reviewed was made and entered on April 6, 1956.

The petitioners' Petition for Rehearing was denied May 7, 1956. The respondent's Petition for Rehearing was denied May 21, 1956.

The jurisdiction of the Supreme Court of the United States is invoked under Section 1254 (1) Title 28 U.S.C.A., 62 Stat. 928.

QUESTIONS PRESENTED

(1) Does the Labor - Management Relations Act, 1947, 61 Stat. 136 et seq., 29 U.S.C.A. Section 141 et seq., deprive a federal court, sitting in a diversity case, of jurisdiction to award damages under the state law for conduct consisting *solely* of peaceful picketing, if such conduct involves an unfair labor practice for which a remedy in damages is allowable under the Act?

(2) Does the Labor - Management Relations Act, 1947, deprive a federal court, sitting in a diversity case, of jurisdiction to award damages for peaceful nonviolent picketing under the state law, if such conduct does *not* constitute an unfair labor practice under the Act?

(3) Is the peaceful picketing of a ship by an uncertified union to induce employees of neutral independent contractors to refuse, in the course of their employment, to work on the ship, as ordered by their employer, where the object is to force the independent contractors to cease doing business with the shipowner in the repairing of the ship, and to require the shipowner to reemploy the crew it had discharged in jobs open on the ship, conduct which is prohibited by the provision of Section 8 (b) (4) of the Labor-Management Relations Act, 1947, and for which a remedy in damages is given in Section 303 of the Act, or conduct which is protected and permitted by the provisions of Section 7 of the Act?

(4) Does the Labor - Management Relations Act, 1947, deprive a federal court, sitting in a diversity case, of jurisdiction to award damages under the state law for

peaceful picketing of a ship by an uncertified union to induce employees of neutral independent contractors to refuse in the course of their employment to work on the ship as ordered by their employers, where the object is to force the independent contractors to cease doing business with the shipowner in repairing the ship, and to require the shipowner to reemploy the crew it had discharged in jobs open on the ship?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are involved herein:

(1) Artcile I, Section 8, Clause 3:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. * * *"

(2) Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The following Statutes are involved herein:

(1) Section 7 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 140, 29 U.S.CA. Section 157:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

(2) Section (8) (b) (4) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 65 Stat. 601, 29 U.S.C.A. Section 158 (b) (4):

"It shall be an unfair labor practice for a labor organization or its agents * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees under

the provisions of section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter. * * *"

(3) Section 301 (b) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C.A. Section 185 (b):

"Any labor orgainization which represents employees in a industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

(4) Section 303 of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 158, 29 U.S.C.A. Section 187:

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title. * * *

(b) Whosoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties and shall recover the damages by him sustained and the costs of the suit."

STATEMENT OF THE CASE

The three cases which are consolidated in this petition were brought as common law actions by a shipowner to recover damages, under state law for the loss of the use of its vessel, caused by peaceful picketing conducted by the petitioners, who are individuals, sued as representatives of a class composed of certain maritime labor unions.

The respondent is a Panamanian corporation and the owner of the SS RIVIERA, a Liberian flag vessel. In March of 1952 the vessel commenced a voyage at Bremen, Germany, to New Orleans, Louisiana, where it loaded a cargo of grain which was carried to the Orient. The vessel then went from the Orient to Portland, Oregon, to undergo certain repairs and to load another cargo of grain for carriage to the Orient.

On September 9, 1952, when the vessel was at Portland, Oregon, practically all of the crew members went on strike and demanded their pay and their transportation to their ports of engagement. They were immediately discharged by the master and were later expelled from the vessel. On September 15, 1952, the crew members signed cards designating the Sailors' Union of the Pacific as their collective bargaining representative. From October 14 to November 26, 1952, picketing of the vessel was conducted by the petitioners, who are members of the Sailors' Union of the Pacific, pursuant to resolution adopted by the union. The petitioners constituting members of the Masters, Mates and Pilots union picketed the

vessel from November 28 to December 8, 1952, and the petitioners who are members of the Seafarers' International Union picketed the vessel from December 10 to December 12, 1952.

During the period of picketing by the petitioners there were 25 jobs open for seamen aboard the vessel.

The picketing was at all times peaceful and involved neither violence nor threats of violence. The employees of independent contractors, engaged in stevedoring and ship repair work on the vessel, refused to work while the pickets were present, although they were ordered to do so by their employers. The respondent was therefore unable to repair and load its vessel, and it laid idle during the picketing.

The respondent brought the instant cases separately in the District Court for the District of Oregon praying for injunction against the picketing and for damages for the loss of the use of its vessel. The cases were filed as class suits against individual members of the union and all the members of the union as a class. The cases were predicated upon the common law of Oregon on the theory that the picketing was for "an unlawful purpose", in that it sought to require the shipowner to rehire its former crew members who went on strike.

The jurisdiction of the District Court was based upon diversity of citizenship and the amount involved, 28 U.S.C.A. Section 1332 (a) (2), 62 Stat. 869.

The District Court allowed temporary injunctions and appeals were taken to the United States Court of

Appeals for the Ninth Circuit, but were dismissed on the ground that the injunctions were moot because the vessel had departed. *Benz, et al v. Compania Naviera Hidalgo,* 205 F2d 944. The cases were remanded to the District Court to be tried on the issue of damages as if the injunctions had not been issued.

The cases were tried in the District Court without a jury. The court found that the picketing was for "an unlawful purpose" and wrongful under the Oregon law, and awarded damages to the respondent for the loss of the use of its vessel during the periods that the picketing continued.

The following are the essential portions of the court's Findings and Conclusions:

> "* * * On or about September 15, 1952, said striking members of the crew of the SS RIVIERA designated the Sailors' Union of the Pacific as their collective bargaining representative. On October 14, 1952, members of the Sailors' Union of the Pacific, acting pursuant to said designation and pursuant to a resolution duly adopted by said union, commenced picketing said vessel and continued to picket it until restrained and enjoined from further picketing by this court on November 25, 1952. Said picketing would have continued thereafter had it not been so enjoined. All of said picketing at, around or near the SS RIVIERA was at all times conducted in a peaceful manner and without any violence." (Finding of Fact XI, Tr. 241).
>
> "*Said picketing by members of the Sailors' Union of the Pacific was intended to prevent the repairing and loading of the SS RIVIERA;* and the sole purpose of said picketing by the members of the Sailors' Union of the Pacific was to compel the plaintiff to re-employ the said discharged, striking

members of the crew of the SS RIVIERA for a shorter period than that stated in the articles, and at wage rates and other conditions more favorable to them than those stated in said articles. (Finding of Fact XII, Tr. 242). (Emphasis ours).

"Employees of stevedoring and ship repair firms and other shore employees ordered to work on the said SS RIVIERA refused to so work while said pickets representing the Sailors' Union of the Pacific were present. Immediately after the removal of said picket line, employees of contractors with whom plaintiff had contracted for the repair and preparation of the vessel to carry her cargo of grain to India resumed work on said vessel as requested. Plaintiff was unable to use its vessel for the period from October 14 through November 26, 1952, and the sole and proximate cause of such loss of use was the said picketing by defendants. (Finding of Fact XIII, Tr. 242).

"As a further proximate result of defendants' said picketing, plaintiff has suffered definite and measurable damage through loss of earnings and the expense of maintaining the SS RIVIERA and the loyal members of its crew during the period October 14, 1952, through November 26, 1952, in the total amount of $38,700.00. (Finding of Fact XVIII, Tr. 244).

"Defendants' said picketing was the sole proximate cause of plaintiff's damages." (Conclusion IV, Tr. 245).

The pertinent portions of the Decrees are set out as Appendices D, E and F.

At the outset of each of the cases petitioners moved the District Court to dismiss on the ground that the court lacked jurisdiction because the Labor-Management Relations Act, 1947, had pre-empted the field. In the

pretrial orders entered in each of the cases, the petitioners also denied the contention that the court had jurisdiction of the subject matter of the suits for the same reason. However, in entering judgment the District Court made a specific finding that it had jurisdiction of the subject matter, and that the respondent has no "remedy under the National Labor Relations Act as amended by the Labor-Management Relations Act, 1947, and the court is not deprived of jurisdiction by the existence of any such remedy." (Tr. 244, 332, 379).

On Appeal to the United States Court of Appeals Specification of Error was made in each case to the finding and conclusion of the District Court that it had jurisdiction and that it was not deprived of jurisdiction by any remedy available under the Labor-Management Relations Act, 1947. This ground was also stated as petitioners' first point upon which they intended to rely on appeal to the Court of Appeals. (Tr. 391).

The Court of Appeals held that the federal labor legislation embodied in the Labor-Management Relations Act of 1947 did not so pre-empt the field as to prevent the exercise of jurisdiction by the District Court, sitting in a diversity case, to enforce the state law. The Court of Appeals was of the opinion that this question was decisively settled by this Court in *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656 (1954). In so holding the Court of Appeals said:

> "The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

> The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact siutation. This is not a secondary boycott or a case of an award of back-pay to reinstate employees where money damages may be recovered under federal law. See *Laburnum*, supra, at 665. Under the test enumerated in the *Laburnum* case, therefore, the state court of Oregon and the federal court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing." (Appendix A p. 27).

Petitioners contend that the Court of Appeals in affirming the judgments for damages herein, ruled contrary to the principles of law announced by this Court in *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 477, 482; *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 666-669; *Garner v. Teamsters Union*, 346 U.S. 485, 488; *International Union v. O'Brien*, 339 U.S. 454, 459; *International Union v. Wisconsin Employment Relations Board*, 336 U.S. 245, 253.

In the above cases this court has declared that peaceful picketing in interstate commerce is exclusively governed by the Labor-Management Relations Act, 1947, particularly where a remedy for damages is provided under the Act.

The facts found by the District Court, upon which judgments for damages were predicated in these cases, either constitute labor disputes within the meaning of the Labor-Management Relations Act, 1947, in which a remedy for damages is provided under Section 303 of the Act, or constitute permissive conduct as defined by Section 7 of the Act. Petitioners contend that the de-

termination of the legality of the picketing and the right to damages, if any, must be made under the federal law in the manner provided in Section 303 of the Act. State law cannot be used to determine these issues.

ARGUMENT

The United States Court of Appeals for the Ninth Circuit has decided a federal question in a way in conflict with the applicable decisions of this court. It has affirmed judgments of the federal district court, sitting in diversity cases, awarding damages based upon state law in cases involving peaceful picketing.

In *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 74 S. Ct. 833 (1954), this court held that where picketing by a union constituted an unfair labor practice in violation of Section 8 (b) (1) (A) of the Labor-Management Relations Act, 1947, that the state court was empowered to allow damages to the employer based upon the state law because the federal Act did not provide a remedy in damages for this particular conduct. In so holding this court said:

> "To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminnal penalties or liabilities for tortious conduct has been eliminated."

This Court also pointed out in the *Laburnum* case that Section 303 of the Act provides a uniform procedure for the recovery of damages resulting from such unfair labor practices as secondary boycotts.

The Court of Appeals in affirming the judgments of the District Court in the instant cases said:

> "The remedy sought in the cases before us is damages. No such remedy exists under the federal law in this fact situation. This is not a secondary boycott or a case of an award of back pay to reinstated employees where money damages may be recovered under federal law. See *Laburnum*, supra, 665. Under the test ennunciated in the *Laburnum* case, therefore, the state courts of Oregon and the Federal District Court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing." (Appendix A, page 27).

The "fact situation" of these cases is set out in the Findings and Conclusions of the District Court quoted above (Tr. 241, 327, 374). The cases involved peaceful picketing which either constituted a secondary boycott, which is an unfair labor practice, for which damages may be recovered under Section 303 of the Labor-Management Relations Act, 1947, or it constituted conduct which is protected by Section 7 of the Act.

If the Findings and Conclusions demonstrate that the picketing was intended to prevent the repairing and loading of the SS RIVIERA by inducing and encouraging employees of independent contractors to refuse, in the course of their employment, to perform services on the vessel, with the object of forcing the independent contractors to cease doing business with the shipowner, and to require the shipowner to bargain with the unions to rehire the former crew members, then this would have constituted an unfair labor practice. The shipowner would have had a remedy for damages against the

unions under the provisions of Section 303 of the Act. The Act would prohibit the particular conduct involved and would provide a remedy for damages. The remedy established by the Act would be exclusive, and a state court or a federal district court in a diversity case would not have jurisdiction to award damages under the state law.

On the other hand, if the unions were picketing the vessel for recognition either as representatives of the respondent's employees, or on their own behalf, then such conduct would be protected under Section 7 of the Act. A state court or a federal court in a diversity case cannot award damages for conduct protected by the Federal Act.

Whether the picketing was conduct which was protected by the Act or prohibited by the Act is a question which should be determined under the procedure set up by the Act, and not by a state court or a federal court in a diversity case. *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, (1955).

The Court of Appeals also held that the state law may be applied to allow damages in cases of picketing in interstate commerce where the picketing is peaceful and involves no violence.

In the *Laburnum* case, supra, the picketing that was involved was violent and coercive, and in allowing damages under the state law this Court concluded its opinion as follows:

> "If petitioners were unorganized private persons, conducting themselves as petitioners did here, Vir-

ginia would have undoubted jurisdiction of this action against them. The fact that the petitioners are labor organizations, with no contractual relationship with respondent or its employees, provides no reasonable basis for a different conclusion."

Also, in *Weber v. Anheuser-Busch, Inc., supra,* the *Laburnum* case was described as "an action for damages based on violent conduct."

Indeed, the Court of Appeals for the Ninth Circuit had itself held earlier that the *Laburnum* case was limited to situations involving violence and the exercise of police power of the state. In its decision on rehearing in *Born v. Laube,* 213 Fed. (2d) 407 (CA-9 1954) the Court of Appeals said:

> "Moreover, unlike Laburnum, there was no evidence of threat of violence which might serve to bring the cause within the area of Territorial police power."

The Supreme Court of the United States earlier this month handed down a decision in *Auto Workers v. Wisconsin Employment Relations Board,* (Case No. 530 June 4, 1956) which stated:

> "As a general matter we have held that a state may not, in the furtherance of its public policy, enjoin conduct 'which has been made an unfair labor practice under the federal statutes' * * *. But our post Taft-Hartley opinions have made it clear that this general rule does not take from the states power to prevent mass picketing, violence, and overt threats of violence. The dominant interest of the state in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. Nor should the fact that a union commits a federal unfair labor practice while engaging in

violent conduct, prevent states from taking steps to stop the violence. This conclusion has been explicit in the opinions cited in note 12, supra."

The decision of the Court of Appeals in allowing damages under the state law for peaceful picketing conducted in interstate commerce is in conflict with the applicable decisions of this Court, and particularly the recent decision in *Auto Workers v. Wisconsin Employment Relations Board, supra.*

It is essential that a Writ of Certiorari be granted by this Court in order to determine important questions relating to the construction, interpretation and application of the National Labor Relations Act as amended by the Labor-Management Relations Act, 1947, and specifically to determine whether or not the state court, or a federal court in a diversity case, has jurisdiction to award damages under the state law for peaceful picketing in interstate commerce, where either the peaceful picketing constitutes an unfair labor practice, or conduct protected by the Act.

In *Weber v. Anheauser-Busch, Inc., supra,* this Court, after pointing out that the area of pre-emption in this field was uncertain, said: "This perumbral area can be rendered progressviely clear only by course of litigation." The determination by this Court of the questions involved in the instant cases will clarify important unsettled problems arising under the Labor-Management Relations Act, 1947. See *Isaacson, Federal versus State Jurisdiction,* 42 A.B.A.J. 415.

PRAYER

WHEREFORE your petitioners pray that a Writ of Certioari be issued out of and under the seal of this court directed to the United States Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court a transcript of the record in the above entitled consolidated cases, including also the proceedings in said Court of Appeals, to the end that said causes may be reviewed and determined by this Court, and that the judgments of the Court of Appeals and the judgments of the United States District Court for the District of Oregon be reversed.

WILLIAM BENZ, et al,
M. D. MACRAE, et al,
JEFF MORRISON, et al,

By KNELAND C. TANNER,
RICHARD R. CARNEY,
Counsel for Petitioners,
509 Broadway Building,
Portland 5, Oregon.

APPENDIX A

Opinion of the United States Court of Appeals For the Ninth Circuit

---

These are appeals from judgments awarding damages in three separate suits brought by the appellee, a Panamanian corporation, in the district court. Appellee is the owner and operator of the S. S. Riviera, a vessel of Liberian registry. The appellants, defendants in the several actions below, are citizens of the State of Oregon and of states or counties different from that of the plaintiff. Appellants were sued individually as officers of three voluntary unincorporated labor associations, and also as representatives of classes composed of the members of their respective labor associations.

These cases were before us previously, on appeals from interlocutory injunctions issued against the same appellants to restrain them from picketing appellee's vessel. *Benz v. Compania Naviera Hidalgo, S.A.*, 205 F. 2d 944 (9th Cir. 1953). The vessel had sailed before the case came on for hearing and we accordingly dismissed for moothess, returning the case to the district court for trial of the damage claims. We directed that those claims be prosecuted free from the effects of res judicata arising from the injunctions, and generally "as free from the effects of such injunctions, as if the same had not been issued." Id., at p. 947.

The basic facts are these: The Riviera arrived at the Port of Portland, Oregon, on September 3, 1952. Her

crew were all foreign nationals, chiefly Germans and British, who between March and August, 1952, had signed British articles in Germany, agreeing to work on the ship on a voyage from Bremen, Germany, for a period of two years, and agreeing that British maritime board conditions should apply to their wages, hours of employment and working conditions. About September 9th, the crew entered upon a strike and refused to leave the vessel. They remained on the vessel and on strike until September 26, 1952, when they were required by an order and decree in admiralty issued out of the district court to leave the ship.

The district court found that the company had lived up to all of its obligations under the articles, that the vessel was seaworthy, and that the purpose of the strike was to secure shorter articles and higher wages than those agreed upon. On October 14, 1952, the Sailors' Union of the Pacific, pursuant to resolution duly passed by its members, took up the picketing of the ship, which had been carried out hitherto by the striking crew itself. From October 14th to November 26, 1952, when it was enjoined from further picketing by the district court, the Sailors' Union of the Pacific picketed the vessel for the purpose, as the district court found, of compelling the company to rehire the striking crew members at higher wages, different conditions, and for shorter articles than those agreed upon.

On November 28, 1952, two days after the injunction against the Sailors' Union of the Pacific was issued, another picket line was established at the vessel by Local

90 of the National Organization of Masters, Mates and Pilots. The district court found that the purpose of the picketing was to enforce the demands of the crew and to assist the Sailors' Union of the Pacific in enforcing the demand of that union that the crew be rehired on the conditions and terms demanded. On December 8, 1952, the National Organization of Masters, Mates and Pilots, Local 90, was enjoined from further picketing.

On December 10, 1952, another picket line was established by the Atlantic and Gulf District, Seafarers' International Union, and maintained until restrained by the district court on December 12, 1952. The district court found that the purpose of the picketing by the Atlantic and Gulf District, Seafarers' International Union, was the same as that of the National Organization of Masters, Mates and Pilots, Local 90, that is, to assist the Sailors' Union of the Pacific in enforcing its demand that the striking crew be rehired on different terms than those agreed upon, and to compel the company to meet that demand.

The district court further found that all picketing was at all times peaceful and orderly, that the refusal of shore employees engaged in repair and loading of the vessel to cross the picket lines was directly caused by the picketing of the appellants, and assessed damages in accordance with the number of days' delay caused by each of the appellants respectively.

Appellants' specifications of error, so far as they relate to questions of law, may be grouped under three general categories. It is argued that the district court

erred in concluding that (1) it had jurisdiction to try these damage cases, (2) the acts complained of constituted actionable torts under Oregon law, and (3) that these were proper class suits and that the judgments could be enforced against the assets of unincorporated associations.

(1) The district court's jurisdiction is attacked, first, by reason of the Norris-La Guardia Act's prohibitions against injunctions in labor disputes. See Title 29 U.S.C.A. Secs. 101-114. The appeals before us, however, have nothing to do with the injunctions issued by the district court in the previous litigation between the parties at bar. The Norris-La Guardia Act is not involved in these cases, and is not discussed further.

The district court's jurisdiction is next assailed on the ground that the picketing by the labor associations here involved is with the protection, or alternatively, prohibition of the National Labor Relations Act as amended by the Labor Management Relations Act, 29 U.S.C.A. 141 et seq.

The district court's jurisdiction derived from 28 U.S.C.A. 1332(a)(2). In granting a remedy, it was applying the tort law of Oregon. The question posed, therefore, is whether the reach of the federal labor legislation extends to take exclusive cognizance of the cause, forestalling the exercise of jurisdiction by courts acting as courts of enforcement of state law, and relegating the dispute to the National Labor Relations Board. It may be noted that no party to any of these cases at any time had resort to the Board.

Appellee argues, on the basis of cases holding that the collective bargaining provisions of general labor legislation are not applicable to seamen during the period of valid articles, *Southern Steamship Co. v. NLRB*, 316 U.S. 31 (1942); *Rees v. U. S.*, 95 F. 2d 784 (4th Cir. 1938); *Peninsular & Occidental Steamship Co. v. NLRB*, 98 F. 2d 411 (5th Cir. 1938), that the picketing here undertaken by the labor associations to enforce the demands of a crew of a vessel in violation of their articles is not within the scope of the conduct regulated by the National Labor Relations Act, as amended. Appellee argues further that, regardless of the applicability of general American labor legislation to American maritime labor disputes, Congress did not intend to subject this dispute to the National Labor Relations Act, as amended. This is a dispute between a foreign employer and a foreign crew having signed foreign articles in a foreign port to serve on a foreign ship. The sole points of contact with America in this case are the eruption of the dispute in an American port, and the participation of American labor associations in the dispute by means of picketing.

It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar. Cf. *Lauritzen v. Larsen*, 345 U.S. 571 (1953) (Applicability of Jones Act to foreign seamen injured on foreign vessel. See especially the discussion of Mr. Justice Jackson, for the Court, at p. 581 et seq.) The

National Labor Relations Board, furthermore, seems to have taken the position that it has no jurisdiction to determine the collective bargaining agent for the crew of a foreign vessel. *Sailors' Union of the Pacific, Case No. 20 R. C. 809, C.C.H. Labor Reports, 1950-51 N.L.R.B. Decisions, Par. 1,081, May 1, 1950.*

However, it does not seem to us necessary to decide the question whether and to what exent the National Labor Relations Act, as amended, would extend to the controversy before us. The narrow question before us is not whether the National Labor Relations Act, as amended, applies to this dispute at all, but whether it has preempted the field so completely as to bar Oregon from giving a remedy by means of an action in tort for the damage done by the picketing here involved. That question seems to us decisively settled by the Supreme Court in *United Construction Workers v. Laburnum Construction Co.*, 347 U.S. 656 (1954). In that case, damages were sought in a state court for harm done by picketing, including harm done by violent picketing. The Court said, with respect to the union's argument there:

> "They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in Garner v. Teamster's Union, 346 U.S. 485, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages caused by such conduct. The latter exclusion is the issue here. In the Garner case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither pro-

vided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." At 664.

The Court went on to affirm the award of damages in the state court. The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

The remedy sought in the cases before us is damages. No such remedy exists under the federal law for this fact situation. This is not a secondary boycott or a case of an award of back-pay to re-instated employees where money damages may be recovered under federal law. See *Laburnum, supra,* at 665. Under the test enunciated in the *Laburnum* case, therefore, the state courts of Oregon, and the federal district court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing. Appellants urge upon us the distinction that in the *Laburnum* case the picketing itself was unlawful in the sense that the means used were violent, whereas in the instant case, the means of picketing were peaceful, but the end unlawful. This distinction might have been argued before the *Laburnum* decision. See Cox, *Federalism in Labor Law,* 67 Harv. L. Rev. 1297, 1327 (1954). And an argument much to the same effect was made in the dissenting opinion in the *Laburnum* case. See 347 U.S. 656, at 669-670. But nothing in the opinion of the Court in *Laburnum* suggests an acceptance of that argument, or an intent to restrict its effect to cases of violent picket-

ing, or other tortious means as distinguished from ends. The Court said in that case, at p. 669:

> "If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done."

A business may be damaged or destroyed by peaceful picketing as well as by violent picketing. We think that *Laburnum* covers wrongful ends as well as wrongful means.

Appellants have cited *International Brotherhood of Teamsters v. N. Y., New Haven, & Hartford*, Supreme Court, October Term 1955, No. 33, Jan. 9, 1956. But the Supreme Court there granted certiorari only to determine "whether the state court had jurisdiction to enjoin the petitioner's conduct," and not whether the state could grant tort damages after the harmful conduct had occurred. Nothing in that case modifies the rule of the *Laburnum* case as here applied.

(2) The second category of specifications of error relates to the district court's conclusion that the picketing here involved was for an unlawful purpose and therefore an actionable tort under the law of Oregon. Appellants argue that under the law of Oregon picketing is for an unlawful purpose only when it has for its object the commission by an employer of an illegal act in the sense of a violation of law, not merely an act which is held to be against the public policy of the state.

We have examined the cases cited by both briefs and find nothing in them to negative the district court's conclusion that picketing for the purpose of requiring a shipowner to rehire seamen who had struck in violation of their articles is picketing for an unlawful purpose under the law of Oregon. E.g., see *Schwab v. Moving Picture Machine Operators, Local No. 159*, 165 Ore. 602, 109 P. 2d 600 (1941).

Appellants also argue that the damage awards deprived them of their right to free speech; that the refusal of the shore employees to cross appellants' picket lines is wrongful conduct on the part of the shore employees and therefore not to be attributed to the appellants' actions; and that the appellee could not have been damaged during the period of the picketing because it did not have the custody of the vessel for the idleness of which it claimed damages. We do not feel it necessary, after a reading of the record, to discuss these arguments, except to say that they are unfounded.

(3) The third category of specifications of error relates to the propriety of the class suit and the form of the judgment in each of the three cases. The suits were brought against the officers of the labor associations individually and as representatives of the members of the respective associations. So far as these suits are class suits, they were properly brought under Fed. R. Civ. P. 32 (a) (1). The propriety of class suits to sue members of labor unions where those unions may not be sued as separate entities is too well established to require the citation of authority here. Appellants' argument that the

members of the unions did not have sufficiently identical interests to constitute them classes subject to class suits, by reason of the fact that they were not all engaged in the off-shore grain trade, lacks substance. We find no error in permitting the suits as class suits.

The district court entered final decrees against the individual officers served, the members of the associations they respectively represented, as a class, and also against the labor associations as separate entities, directing further that execution be had against the personal assets of the individuals served in the actions, and against the assets of the associations, but not against the personal assets of individuals not served. Appellants specify as error the judgments against the associations and the order to enforce these judgments against their assets.

Rule 17(b) of the Fed. R. Civ. P. provides that the capacity of an unincorporated association to sue and be sued should be determined by the law of the state in which the district court is held, unless the cause of action arises under federal laws. The cause of action here arises under the laws of Oregon. It is conceded that Oregon follows the common law rule that unincorporated associations, like partnerships, may not be sued in their own names. *Cousins v. Taylor*, 115 Or. 472, 239 Pac. 96 (1925); Restatement, *Judgments*, sec. 24, Comment (a).

The question presented, therefore, is whether under Oregon law, although unincorporated associations may not be sued in their names, judgment against their members as classes may nevertheless be enforced against the assets of the associations. At common law, the nature of

tort liability was that of the members severally. See *Speery Products, Inc. v. Association of American Railroads*, 132 F. 2d 408 (2d Cir. 1942), Opinion of Judge L. Hand, at 410. And it was the undoubted proposition that the several liabilities of the members could not be enforced against the assets of the unincorporated associations that led to the adoption of the rule, for the federal courts, of *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922), in which Chief Justice Taft said:

> " . . . we think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes." Id. at 391.

The *Coronado* rule was an undoubted modification of the common law as it had developed up to that time. Subsequent to the decision of *Coronado*, the S. Ct. of Oregon decided *Cousins v. Taylor*, 115 Or. 472, 239 Pac. 96 (1925), in which it assumed, as a ground supporting its decision holding the officers of an unincorporated association subject to a suit, that the association itself could not be liable. And as recently as 1953, the Supreme Court of Oregon affirmed that it had "not as yet adopted the rule of the Coronado case . . ." See *Lonsford v. Burton*, 200 Or. 497, 267 P. 2d 208, at 200 Or. 511-512. The *Lonsford* case itself concerned the sufficiency of identity of interest of plaintiffs with other alleged members of a class, so as to entitle plaintiffs to sue as representatives of a class. The Court's dictum there does not suggest that it has modified the common law rule so as to enable

appellee here to enforce its judgments against the assets of the associations. Nor do any other cases in the Oregon courts cited to us suggest any such modification. Appellee cites *Brotherhood of Locomotive Firemen, etc. v. Tunstall,* 163 F. 2d 829 (4th Cir. 1947). That cause of action arose under federal law and is not apposite to the question before us. The Restatement of Judgments, sec. 78, says:

> "Comment: (c) . . . In States in which suit can be maintained against an unincorporated association in its business name, judgment can be rendered which is valid against the assets of the association . . . "

At present, Oregon is not a state in which suit can be maintained against an unincorporated association. It may be that the courts of Oregon will adopt the rule of the *Coronado* case in time, or that the legislature of that State will enact legislation to that effect, but it is not for the federal courts to modify the common law of the state of Oregon. So much of the final decrees in the three cases, therefore, as grant judgment against the unincorporated associations as such and permit execution against their assets, are reversed. The remainders of the three decrees are affirmed. The cases are remanded for entry of decrees consistent with this opinion.

(Endorsed:) Opinion. Filed Apr. 6, 1956.

Paul P. O'Brien, Clerk.

APPENDIX B

Opinion of the United States Court of Appeals For the Ninth Circuit

This is appellee's petition for rehearing.

Appellant's petition for rehearing was denied on May 7, 1956. No issues are presented in appellee's petition which were not heretofore considered by this Court.

It is only the very able opinion of the trial court, urged upon us by the appellee with respect to his chief contention, that prompts us to make further brief comment. Appellee, conceding that the courts of Oregon have not yet adopted the *Coronado** rule, (allowing suits of unincorporated associations as separate entities and execution of judgments against their assets) now argues that the common law distinction between class suits against the members of an association and suits against the associations themselves is a matter of "semantics, not substance." The judgment and order entered below restricted the execution of the judgments to the assets of members of the class served in the action, thus preserving the rights of other members of the class to make their usual defenses, if any, before judgment may be had against them personally and execution may be had against their personal assets. If the assets of the union are indeed the property of the members, to allow execution against those assets would be, to allow execution against the assets of persons not served in the action. Plainly, it is

*United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

because there is this real difference between the remedies of suit against the members as a class and suit against the association itself, that the *Coronado* rule was adopted in the federal courts, and that appellee now seeks to have this Court subsume under the heading of "semantics" the difference between that rule and the one obtaining in the State of Oregon.

The petition for rehearing is denied.

(Endorsed:) Order on Appellee's Petition for Rehearing. Filed May 21, 1956.

Paul P. O'Brien, Clerk.

APPENDIX C

Opinion of District Court on Consolidated Cases For Damages

August 9, 1954

SOLOMON, Judge.

By stipulation, these three cases were consolidated for trial on plaintiff's claims for damages allegedly arising from the picketing of its vessel, the SS RIVIERA, by defendants.

The background of the controversy, as well as the particular facts out of which these arose, has been described in detail in the opinions which I rendered in connection with plaintiff's applications for interlocutory injunctions,[1] in the Court of Appeals' opinion dismissing the appeals from the orders granting the injunctions,[2] and in prior cases growing out of the same controversy.[3]

By reason of such opinions and the participation of counsel for both plaintiff and defendants in all of such

---

[1]Civil No. 6699. Opinion dated November 22, 1952.
Civil No. 6735. Opinion dated December 6, 1952.
Civil No. 6745. Opinion dated December 12, 1952.

[2]205 F. 2d 944.

[3]Compania Naviera Hidalgo, libelant, v. SS RIVIERA, her engines, etc., N. Pedersen, et al. Civil No. 6629. Opinion dated September 25, 1952.

H. Berg et al, libelants and cross-respondents v. SS RIVIERA, her engines, tackle and gear, respondent. Civil No. 6652. (Tr. 456).

Compania Naviera Hidalgo, S.A., claimant and cross-libelant, Compania Naviera Hidalgo, S.A., Owner of the SS Riviera, her engines, etc., libelant, v. Sailors Union of the Pacific et al, respondents. Civil No. 6661. Opinion dated October 22, 1952. (Tr. 456)

cases, no useful purpose will be served to repeat the facts here.

On the issue of damages now before the court, in addition to the agreed facts contained in the pretrial orders, the transcripts of the testimony and the exhibits introduced in evidence in all of the prior proceedings and cases were received in evidence. The only other evidence admitted at the trial related to the damages which plaintiff alleges it suffered as the result of the picketing and such evidence consisted of a few exhibits and the testimony of only one witness, Captain Pangas.

I find that all of the agreed facts set forth in each of the pretrial orders are true.

On the issue of jurisdiction, I find that:

1. The members of each union named as a defendant is each of these three cases have sufficiently identical interests in the subject matter to constitute a class subject to suit by service upon representatives.

2. The individuals named as defendants in each case, by virtue of their positions as members and officers of such union and their interest as defendants in such case, are appropriate and capable persons to represent the interests of all the members of the union.

3. Each of such cases brought by plaintiff is a class action and is appropriate and proper to enable plaintiff to recover damages suffered as the result of picketing by members of the union.

On the issues raised in connection with the merits of each case, I find that Findings of Fact I to IX, in-

clusive heretofore rendered in these cases in connection with the granting of the interlocutory injunctions, are true and correct and I hereby adopt and incorporate in this opinion such findings of fact, except as to the amount of damages suffered by plaintiff.

I further find that the damages sustained by plaintiff in each case were the proximate result of the picketing of the SS RIVIERA by the defendants named in such case. Specifically, I find that the picketing was undertaken for the purpose of preventing plaintiff from repairing and loading the SS RIVIERA and that such picketing effectively prevented the repairing and loading of such vessel; that the failure of employees of independent contractors to cross the picket line did not constitute an independent intervening cause of plaintiff's damage; that the damages sustained by such picketing were not so indefinite and uncertain as to prevent damages from being assessed; and the fact that the vessel was in the technical custody of the United States Marshal during all or a portion of this period did not deprive plaintiff of the opportunity to repair and load the vessel, but such inability was solely caused by the picketing of the vessel by members of the defendant unions.

I find that in case No. 6699 plaintiff was damaged in the amount of $38,700, as a result of the acts of the defendants in such cases, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6735 plaintiff was damaged in the amount of $9,000 as the result of the acts of defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6745 plaintiff was damaged in the amount of $2,700 as the result of the acts of the defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I further find that the judgment to be entered in each of these cases shall be in favor of plaintiff and against the individually named defendants, each member of the defendant union, and the defendant union itself, but that execution thereon shall be limited to the property of the individually named defendants who were actually served with summons and complaint and against the property of the union, but not against the property of the individual members who were not so served.

COMMENT

Defendants' brief raises four principal contentions:

First, that this court is deprived of jurisdiction because the Taft Hartley Act has pre-empted the field. This same contention was urged at the time I had under consideration the issuance of the interlocutory injunctions. In my opinion dated November 22, 1952, in Civil No. 6699, I stated:

> "It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers—between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew. The National Labor Relations Board has construed the act in the same way. In a petition brought by the Sailors' Union of the Pacific to represent foreign seamen on a ship registered under a foreign flag the National

Labor Relations Board dismissed the petition on the ground that the internal economy of a vessel of a foreign registry and ownership was involved. (Companie Maritima Samsok, Ltd., Sailors' Union of the Pacific A.F.L.) Case Number 20-RC-809 May 1, 1950."

I have carefully examined the argument of defendants on this issue and particularly the statutory provisions and the decisional law. However, nothing therein contained has altered my opinion that these cases are not governed by the provisions of the Labor Management Relations Act (Taft Hartley Act).

Second, that the picketing by the defendant unions was not wrongful. In the opinion to which I have already referred, I have set forth my views and have stated that the object of the picketing in each case was illegal. I do not agree with defendants' contention that picketing is unlawful only in those instances in which a union seeks to require an employer to commit an illegal act. In my view, picketing for an illegal purpose froms a proper basis for the allowance of damages.

Third, that no damages were proximately caused by the picketing but the losses plaintiff suffered were solely due to the refusal of the longshoremen and repairmen to cross the picket line and such wrongful acts constituted independent intervening causes of such losses.

I cannot agree with this contention.

The conduct of the longshormen and the repairmen who refused to cross the picket line was foreseeable; in fact, it was the result which the defendants intended to

accomplish by the picketing. I do not believe that Judge Fee's opinion in *Montgomery Ward & Co. v. Northern Pacific Co. et al* is applicable to a situation of this kind. The most defendants can get from that decision is that the longshoremen and the repairmen might be equally liable with the defendants.

Fourth, defendants' last contention is that any judgment that is rendered in this case should not run against the property of the union itself because a judgment may not be entered against the union as an entity in Oregon.

It is true that, in Oregon, unincorporated labor organizations may not be sued as entities. As recently as October 21, 1953, in the case of *Lonsford et al v. Burton et al* (58 Oregon Advance Sheets No. 6, page 295) Judge Brand stated that the Supreme Court of Oregon "has not yet adopted the rule of the Coronado case" (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344). In spite of such statement, the court treated the answers of certain members of an International Union as an answer made on behalf of the International.

However, the fact that an unincorporated union may not be sued as an entity does not mean that a union may not be bound by a judgment rendered in a class action in which some individual members of the union are named and served.

One of the questions considered in *Tunstall v. Brotherhood of Locomotive Firemen & Engineers*, 148 F. 2d 403, was:

> "May a class suit be brought against an unincorporated association in such a way as to bind the association?"

Chief Judge Parker, speaking for the court in that case, answered this question in the affirmative. He discussed Rule 23 of the Federal Rules of Civil Procedure which relates to class actions and found that:

> "The right to bring a class suit to enforce the liability of an unincorporated association existed long prior to the adoption of the Federal Rules of Civil Procedure." (page 404)

He also stated:

> "Even in a state like West Virginia which adheres to the common law rule that an unincorporated labor association may not be sued as an entity, see Milam v. Settle, W. Va., 32 S.E. 2d 269, such an association may be sued in the state courts by naming as parties and serving individually some of the members composing the association. See West v. Baltimore & Ohio R. Co., 103 W. Va. 417. 137 S.E. 654; Simpson v. Grand International Brotherhood of Locomotive Engineers, 83 W. Va. 355, 98 SE, 580."

Defendants do not challenge this holding. In fact they concede:

> "That members of unincorporated labor organizations may be sued for torts through the medium of the class suit."

Having made this concession, I do not understand the logic of their contention that the assets of an unincorporated union, to which all of the members have the right of joint use and enjoyment, may not be reached in a class action brought against all of the members of the union for the acts of the union itself.

In other words, defendants contend that, even though the personal assets of individual members of the union

who were served may be levied upon in this action and even though a judgment rendered against a class may be used as the basis for obtaining judgments against other members of the union who were not served in order that their personal assets may be levied upon, the assets of the union itself which caused the breach which resulted in the judgment may not be reached.

In my view the mere statement of defendants' contention reveals its unsoundness. Even without considering the gross inequity of such result, this contention disregards the nature of a class action. A class action is merely a procedural device that has been traditionally used in some jurisdictions which follow the common law rule that such associations may not be sued as entities. Whichever procedure is followed, the final result is the same.

Counsel for plaintiff in each case shall prepare appropriate findings of fact, conclusions of law, and judgments, all in conformity with this opinion.

APPENDIX D

COMPANIA NAVIERA HIDALGO, S.A., *Plaintiff,*

vs.

WILLIAM BENZ, et al, *Defendants.*

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $38,700.00, together with its costs and disbursements of and from William Benz and Robert Williams, each member of the Sailors' Union of the Pacific, and Sailors' Union of the Pacific, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of William Benz and Robert Williams and against any property held by the Sailors' Union of the Pacific, or for the use and benefit of the members of the Sailors' Union of the Pacific, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Sailors' Union of the Pacific, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.

APPENDIX E

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, et al,

Defendants.

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $9,000.00, together with its costs and disbursements of and from M. D. MacRae, William Caldwell and Viggo Hansen, each member of Local 90, National Organization of Masters, Mates and Pilots, AFL, and Local 90, National Organization of Masters, Mates and Pilots, AFL, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and.

It Is Hereby Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of M. D. MacRae, William Caldwell and Viggo Hansen and against any property held by Local 90, National Organization of Masters, Mates and Pilots, AFL, or for the use and benefit of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property

of any member of Local 90, National Organization of Masters, Mates and Pilots, AFL, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.

APPENDIX F

COMPANIA NAVIERA HIDALGO, S.A., *Plaintiff,*

vs.

JEFF MORRISON, et al, *Defendants.*

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $2,700.00, together with its costs and disbursements of and from Jeff Morrison, John Johnson, each member of the Atlantic Gulf District, Seafarers International Union, AFL, and the Atlantic and Gulf District, Seafarers International Union, AFL, an unincorporated association of seafaring men with its West Coast headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of Jeff Morrison and John Johnson and against any property held by the Atlantic and Gulf District, Seafarers International Union, AFL, or for the use and benefit of the members of Atlantic and Gulf District, Seafarers International Union, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Atlantic and Gulf District, Seafarers International Union, AFL, other than those heretofore individually named and made parties herein."

Note: The portion of the Decree which granted Judgment against the unincorporated association as such and permits execution against its assets was reversed by the Court of Appeals; the remaining portions of the Decree were affirmed.